

United States

Circuit Court of Appeals

For the Ninth Circuit.

WILSON BROTHERS AND COMPANY, (Wilson Bros. & Co.,) a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

APPEARANCES:

For Taxpayer:

A. E. GRAUPNER.

For Comm'r:

T. M. MATHER,

ALVA C. BAIRD.

Docket No. 83397

WILSON BROTHERS AND COMPANY,
(WILSON BROS. AND COMPANY,
a Corporation),

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1936

Mar. 25—Petition received and filed. Taxpayer notified. (Fee paid).

Mar. 25—Copy of petition served on General Counsel.

Apr. 30—Answer filed by General Counsel.

May 5—Copy of answer served on taxpayer.

1937

May 1—Hearing set week of July 6, 1937, San Francisco, Calif.

May 20—Motion for a continuance filed by General Counsel. Granted.

1939

- Mar. 25—Hearing set May 29, 1939 in San Francisco, California.
- June 6-7—Called 5/29/39. Hearing had before Mr. Disney on merits. Submitted. Motion to consolidated Dockets 83397 and 93668 granted. Stipulation as to the facts filed. Briefs due Aug. 1, 1939, Reply 9/1/39.
- June 24—Transcript of hearing of June 6, 1939, filed.
- June 24—Transcript of hearing of June 7, 1939, filed.
- July 5—Motion for leave to file amended petition filed by taxpayer. Amended petition lodged. 7/10/39 granted. 7/11/39 copy served on General Counsel.
- July 28—Brief filed by taxpayer. 8/2/39 copy served on General Counsel.
- July 31—Answer to amended petition filed by General Counsel.
- Aug. 1—Brief filed by General Counsel.
- Aug. 3—Copy of answer to amended petition served on taxpayer.
- Aug. 29—Reply brief filed by taxpayer.

1940

- May 22—Memorandum opinion rendered, Richard L. Disney, Div. 4. Decision will be entered under Rule 50.
- June 17—Motion for review by the entire Board or for reconsideration filed by taxpayer.
- June 20—Computation of deficiency filed by General Counsel.

1940

- June 28—Order denying petitioner's motion for reconsideration, entered.
- July 2—Order denying review by the Board, entered. [1*]

1940

- July 9—Hearing set July 31, 1940 on settlement.
- July 22—Consent to settlement filed by taxpayer.
- Aug. 6—Decision entered, R. L. Disney, Div. 4.
- Oct. 31—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- Oct. 31—Affidavit of service filed by taxpayer.
- Nov. 1—Proof of service of petition for review filed.
- Dec. 30—Certified copy of an order from 9th Circuit extending time to 2/3/41 to complete and transmit record, filed.

1941

- Jan. 8—Statement of evidence filed by taxpayer.
- Feb. 3—Certified copy of order from the 9th Circuit enlarging the time to 4/3/41 within which to prepare, transmit and file record, filed.
- Mar. 11—Agreed revised statement of evidence filed.
- Mar. 11—Statement of points on which petitioner intends to rely filed, with proof of service thereon.

*Page numbering appearing at foot of page of original certified Transcript of Record.

Mar. 11—Agreed designation of contents of record filed, with proof of service thereon.

Mar. 14—Certified copy of order from the 9th Circuit, consolidating 83397 and 93668, filed.

[2]

United States Board of Tax Appeals
Docket No. 83397

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.), a corporation,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION FOR ORDER GRANTING LEAVE TO
FILE AMENDED PETITION.

Now comes the petitioner above-named by its counsel, Adolphus E. Graupner and Louis D. Janin, and moves this Honorable Board to grant petitioner leave to file an amended petition in the above-entitled proceeding, which said amended petition is presented herewith for consideration on this motion.

The foregoing motion is made in order to have the pleadings accord with the proofs submitted at the hearing of this proceeding in San Francisco,

California, on June 6th and 7th, 1939, and to comply with the provisions of Rule 6(e) of this Board.

Dated, July 1, 1939.

Respectfully submitted,
ADOLPHUS E. GRAUPNER,
LOUIS D. JANIN,
Counsel for Petitioner.

Granted July 10, 1939.

(Signed) R. L. DISNEY,
Member U. S. Board of Tax
Appeals.

[Endorsed]: U. S. B. T. A. Filed July 5, 1939.

[3]

[Title of Board and Cause.]

AMENDED PETITION

Upon consent of the above-entitled Board to amend the petition in the above-entitled proceeding to conform to the proofs submitted at the hearing thereof and without waiver of right to challenge the constitutionality of any part of any Revenue Act involved in this proceeding or any act of the Commissioner of Internal Revenue or his subordinate, or to object to the jurisdiction of this Board, the above named petitioner hereby petitions for a re-determination of the alleged deficiency set forth by the Commissioner of Internal Revenue in his purported notice of deficiency (IT:E:Aj-RLT-25579-90D) dated December 30, 1935, and as a basis of this proceeding alleges as follows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of Nevada, with its principal office at 1112 Russ Building in the City and County of [4] San Francisco, State of California.

2. The purported notice of deficiency upon which this petition is based (a copy of which is hereunto attached and marked Exhibit "A") was apparently mailed to the petitioner on December 30, 1935.

3. The asserted deficiency in tax here in controversy is for alleged income taxes for the calendar years 1932 and 1933 and, as asserted in said purported deficiency notice, in the amount of not more than \$11,343.36 for the year 1932 and in the amount of not more than \$22,078.01 for the year 1933, or for not more than the sum of \$33,421.37 for the said two years.

4. The alleged determination or proposal of a deficiency in tax set forth in said purported notice of deficiency is erroneous in each and every of the following particulars assigned as errors:

(a) The Commissioner erred in proposing, determining and asserting against petitioner any amount as a deficiency in income tax for either of the calendar taxable years 1932 and 1933.

(b) The Commissioner erred in holding that petitioner was availed of for the purpose of preventing the imposition of surtax or any internal revenue tax upon its shareholders for either or both of the taxable years herein involved, or that petitioner is liable for any additional tax or tax penalty for per-

mitting its gains and profits to accumulate instead of being divided or distributed to its shareholders, or that it in anyway violated, or is subject to taxation or penalty under, the provisions of section 104 of the Revenue Act of 1932 for the years [5] 1932 and 1933.

(c) The Commissioner erred in disallowing the amount of \$5,225.02 as depreciation claimed by petitioner as a deduction for the taxable calendar year 1932, and in not allowing at least \$2,326.08 depreciation in addition to that claimed on the return for said year.

(d) The Commissioner erred in disallowing the amount of \$13,975.02 as depreciation claimed by petitioner as a deduction for the taxable calendar year 1933.

(e) The Commissioner erred in disallowing the amount of \$4,547.05 claimed by petitioner as a deductible loss on steamship operation for the taxable year 1932.

(f) The Commissioner erred in disallowing the amount of \$4,412.26 claimed by petitioner as a deductible loss on steamship operation for the taxable year 1933.

(g) The Commissioner erred in failing to determine the proper adjusted basis for depreciation as of December 31, 1931, on the steamships "Idaho" and "Oregon" and on the furniture and fixtures belonging to petitioner and in using an erroneous alleged "cost" as such basis.

(h) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1932, the amount of \$5,442.32 as taxable income received by way of interest from bank deposits.

(i) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1933, the amount of \$445.18 as taxable income received by way of interest from [6] bank deposits.

(j) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1933, the amount of \$2,160.80 by disallowance thereof as deduction for bad debts.

(k) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1932, the amount of \$18,258.00 representing dividends received by it from domestic corporations subject to tax.

(l) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1933, the amount of \$17,541.00 representing dividends received by it from domestic corporations subject to tax.

(m) The Commissioner erred in adding to the tax returned by petitioner for the taxable year 1932 and the erroneous and illegal computation of an alleged deficiency made by him of the amount of \$567.17 as a penalty pretended to be imposed for negligence as defined by section 293(a) of the Revenue Act of 1932.

(n) The Commissioner erred in adding to the

tax returned by petitioner for the taxable year 1933 and the erroneous and illegal computation of an alleged deficiency made by him of the amount of \$1,103.90 as a penalty pretended to be imposed for negligence as defined by section 293(a) of the Revenue Act of 1932.

(o) The Commissioner erred in attempting to compute any deficiency in income tax against petitioner for either or both of the taxable years 1932 and/or 1933, and particularly in attempting to compute any deficiency in income tax against petitioner [7] for either or both of said years under the provisions of section 104 of the Revenue Act of 1932.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(a) Petitioner is a corporation duly organized on December 14, 1928, under the laws of the State of Nevada. Its correct name and title is "Wilson Bros. & Co." instead of "Wilson Brothers and Company" as stated in the Notice of deficiency. Its sole stockholders are Francis A. Wilson and Winfred T. Wilson.

(b) Petitioner was formed to take over the business of a copartnership of the same name and to acquire, own and operate timberlands, saw mills, logging railroads and equipment, and steamships; also, to buy, sell and transport lumber, to own, operate and maintain steamships and to utilize the same for the transport of cargoes.

(c) During said taxable years petitioner kept and maintained its books of account on the accrual basis.

(d) On or about March 31, 1933, petitioner filed its income tax return for the taxable year 1932 in which it reported no taxable income for said year. Said return stated specifically the items of petitioner's gross income, the deductions and credits claimed by it.

(e) On or about March 15, 1934, petitioner filed its income tax return for the taxable year 1933 in which it reported no taxable income for said year. Said return stated specifically the items of petitioner's gross income, the deductions and credits claimed by it. [8]

(f) The Commissioner has erroneously and illegally proposed and determined a deficiency in income tax against petitioner for the taxable year 1932 in the amount of \$477.61, an additional tax for said year in the amount of \$10,865.75 by erroneously and illegally applying the terms of section 104(a) to the income of petitioner, and a penalty of five percentum on the sum of the above mentioned amounts by illegally applying section 293(a) of the Revenue Act of 1932 to the return filed by petitioner as aforesaid, or a total of deficiency and penalty of \$11,910.53.

(g) The Commissioner has erroneously and illegally proposed and determined a deficiency in income tax against petitioner for the taxable year 1933 in the amount of \$2,870.25, an additional tax for said year in the amount of \$19,207.76 by erroneously applying the terms of section 104(a) to the

income of petitioner, and a penalty of five per centum on the sum of the above mentioned amounts by illegally applying section 292(a) of the Revenue Act of 1932 to the return filed by petitioner as aforesaid, or a total deficiency and penalty of \$23,-181.91.

(h) Respondent added to the amount of total income reported by petitioner in its income tax returns for the respective years 1932 and 1933, under designation in the deficiency notice for said years as "Excessive depreciation", the following amounts:

For the year 1932	\$ 5,225.02,
For the year 1933	13,975.02

Petitioner has claimed as deductible depreciation in its return for said years the following and only the following items and amounts with respect to assets used in the trade or business, viz: [9]

Depreciable Items	1932	1933
Wooden Buildings	\$ 1,000.00	\$ 1,000.00
Steamships "Idaho" and "Oregon".....	8,750.00	17,500.00
Furniture and Fixtures.....	500.00	500.00
Automobiles	900.00	1,649.85
Or a total of.....	\$11,150.00	\$20,649.85

Respondents disallowance of items of deduction in the deficiency notice in this proceeding has not been itemized or specifically explained therein or in his answer to the original petition on file herein or by proofs at hearing of this proceeding.

(i) Petitioner has stipulated to the disallowance of depreciation claimed on wooden buildings in the

total amount claimed for each of the years 1932 and 1933. Petitioner has also stipulated that the allowable depreciation on automobiles for each of the two years involved is \$900.00 for the year 1932 and \$1,649.85 for the year 1933.

(j) The basis to petitioner for depreciation of its 75% interest in the steamship "Idaho", without allowance for depreciation in prior years, was on December 31, 1931, at least \$200,216.67; the depreciation claimed and allowed by respondent to said date was \$108,750.00, as has been stipulated; the petitioner's depreciable basis on said steamship as adjusted for depreciation allowed and allowable for years prior to December 31, 1931, was at least \$91,466.67.

(k) As determined in said deficiency notice said steamship "Idaho" had a useful depreciable life of not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date; and petitioner [10] is and was entitled to an annual depreciation allowance of not less than \$6,097.11 for said period.

(l) The basis to petitioner for depreciation on its 100% interest in the steamship "Oregon", without allowance for depreciation in prior years, was on December 31, 1931, at least \$205,766.32; the depreciation claimed and allowed by respondent to said date was \$109,231.69, as has been stipulated; the petitioner's depreciable basis on said steamship as of December 31, 1931, as adjusted for depreciation al-

lowed and allowable for prior years was at least \$96,434.63.

(m) As determined in said deficiency notice said steamship "Oregon" had a useful depreciable life not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, and petitioner is and was entitled to an annual depreciation allowance of not less than \$6,437.64 for said period.

(n) On January 2, 1929, petitioner acquired furniture and fixtures of a fair market value of \$5,000.00, on which respondent has determined a useful depreciable life of ten years from December 31, 1931. Respondent has allowed \$1,500.00 depreciation on said furniture and fixtures to December 31, 1931, and determined a rate of depreciation of 10% on the remaining ten years of life thereof. Petitioner is therefore entitled to allowance for depreciation on said furniture and fixtures in an amount not less than \$350.00 per annum for each of the taxable years 1932 and 1933.

(o) During the taxable years 1932 and 1933 petitioner was required to protect, maintain and keep in repair the steam- [11] ships "Idaho" and "Oregon" in order to keep such vessels in seaworthy condition and prevent their undue deterioration and depreciation. For such purpose petitioner expended the amount of \$4,547.05 during the taxable year 1932 and the amount of \$4,412.26 during the taxable year 1933. Such expenditures were proper and necessary business expenses and petitioner is entitled to de-

duct said amounts for the respective years despite the disallowance of the same by the respondent.

(p) During the years 1932 and 1933 and prior thereto, petitioner was the managing agent for the steamship "Svea" and as such was required to protect, maintain and keep said vessel in repair. Petitioner was not an owner of any interest in said steamship but as agent was required to perform the services mentioned. Due to said steamship being laid up and making no earnings from which petitioner might reimburse itself and the refusal of the owners to contribute to such expense, petitioner in the year 1933 wrote-off the amount of \$2,160.80 as a partial write-off of a bad debt. Said write-off was made after attempts to collect the same from the shareowners of said steamship and advice of counsel that petitioner had no right of recovery and the determination by petitioner that said amount was beyond hope of recovery.

(q) Petitioner is therefore entitled to deduct from its gross income for the years 1932 and 1933 as reported in its income tax returns for the respective years the following statutory deductible items: [12]

<u>Deductions</u>	<u>1932</u>	<u>1933</u>
Rent, as accepted by respondent.....	\$ 1,415.50	\$ 1,140.00
Taxes, as accepted by respondent.....	752.39	1,284.18
Steamship operations (maintenance).....	4,547.05	4,412.26
Dividends, as accepted by respondent	18,258.00	17,541.00
Depreciation—Steamship “Idaho”		
75% interest	6,097.77	6,097.77
Steamship “Oregon”		
100% interest	6,437.64	6,437.64
Automobiles, as		
accepted	900.00	1,649.85
Furniture and fixtures..	350.00	350.00
Bad debts, as accepted by respondent		19,223.24
Deduction for partial write-off of ad- vancements steamship “Svea”.....		2,160.80
Salaries and wages, as accepted by respondent	5,780.00	5,785.00
General expense, as accepted by re- spondent	2,403.52	3,501.70
	\$46,941.67	\$69,583.44

(r) During the years 1932 and 1933 petitioner in its income tax returns reported for said years respectively the amounts of \$12,949.58 and \$9,035.81 as income from interest. Respondent without explanation in his deficiency notice or affirmative pleading in his answer in this proceeding asserted interest on bank deposits to be taxable in the amount of \$5,442.32 for the year 1932 and \$445.18 for the year 1933 and in his deficiency notice added said amounts to petitioner's income for the said respective years, although petitioner had reported as taxable income from interest on bank deposits amounts in excess of said addition, and although no

amounts of interest in addition to [13] that reported were paid to or accruable to petitioner for said years or either of them.

(s) Petitioner's gross income was correctly reported in its income tax returns for the years 1932 and 1933 as follows:

	<u>1932</u>	<u>1933</u>
Gross income returned.....	\$ 32,565.57	\$75,579.28
From which should be deducted at least	46,941.87	69,583.44
Resulting in net taxable income of (\$-14,476.30)	<u><u> </u></u>	<u><u> </u></u>

(t) Petitioner was not formed or availed of for the purpose of preventing the imposition of any surtax or internal revenue tax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

(u) During the years 1932 and 1933 the economic and financial depression which started in 1929 continued and the impaired and shrunken market value of the assets of petitioner made it inadvisable under sound business practice to declare any dividends or in any other way further impair the assets of the corporation and thus endanger the accomplishment of the business purposes for which petitioner was organized.

(v) Under the facts of this proceeding petitioner is not liable for surtax under section 104 of the Revenue Act of 1932 as amended in any amount upon any possible fair adjustment of its net income

for the taxable calendar years 1932 and 1933. [14]

(w) Under the facts of this proceeding petitioner is not liable for the penalty of five percent sought to be imposed by respondent under the alleged authority of section 293(a) of the Revenue Act of 1932, because the deficiency notice and the testimony adduced shows no negligence, or intentional disregard of rules and regulations, and respondent failed to offer any proof in support of his attempt to impose such a penalty.

Wherefore, the petitioner prays that this Board may hear the proceeding and grant to petitioner such relief from the deficiency, additional tax and penalty asserted by the Commissioner as may be within the jurisdiction of the Board.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Attorneys for Petitioner,
1110 Balfour Building,
San Francisco, California.

[15]

State of California,
City and County of San Francisco—ss.

Francis A. Wilson, being duly sworn, says that he is the president of the above named incorporated petitioner and that he is authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon infor-

mation and belief, and those facts he believes to be true.

FRANCIS A. WILSON

Subscribed and sworn to before me this 30th day of June, 1939.

HAZEL E. THOMPSON

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires September 21, 1942. [16]

EXHIBIT "A"

Office of
Commissioner of Internal Revenue
TREASURY DEPARTMENT

Washington

Dec. 30, 1935

Wilson Brothers and Company,
1112 Russ Building,
San Francisco, California.

Sirs:

You are advised that the determination of your income tax liability for the years 1932 and 1933, discloses a deficiency of \$35,092.44, tax and penalty as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a

redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By W. T. SHERWOOD

Acting Deputy Commissioner.

Enclosures:

Statement

Form 870

Schedule A [17]

STATEMENT

In re: Wilson Brothers and Company,
1112 Russ Building,
San Francisco, California.

Year	Tax Liability	Tax Assessed	Deficiency	5% Penalty
(Consent on 1932 to 12/30/35)				
1932	\$11,343.36	None	\$11,343.36	\$ 567.17
1933	22,078.01	None	22,078.01	1,103.90
Totals	\$33,421.37	None	\$33,421.37	\$1,671.07
Total deficiencies and penalties.....				\$35,092.44

The report of the internal revenue agent in charge at San Francisco, California has been reviewed and is approved by this office.

After careful consideration of your Federal income tax returns and of all other available information the Bureau holds that your corporation is subject to taxation under the provisions of section 104 of the Revenue Act of 1932 for the years 1932 and 1933.

1932

Net loss reported on return.....\$11,740.89

Add:

1. Excessive depreciation	\$5,225.02	
2. Loss on steamship operation.....	4,547.05	
3. Interest	5,442.32	15,214.39

Net income adjusted, section 21.....\$ 3,473.50

Add:

Dividends received 18,258.00

Net income adjusted, section 104(c).....\$21,731.50

[18]

EXPLANATION OF ADJUSTMENTS

1. The excessive depreciation has been disallowed in accordance with section 23(k) of the Revenue Act of 1932 and Treasury Decision 4422. The computation of the depreciation allowable is shown in schedule A attached.

2. The loss on steamship operation has been disallowed for the reason no evidence has been submitted to substantiate the loss as a deduction allowable under the provisions of section 23 of the Revenue Act of 1932.

3. Interest on bank deposits constitutes taxable income in accordance with section 22 of the Revenue Act of 1932.

COMPUTATION OF TAX

Net income, section 21.....	\$ 3,473.50
Tax liability at 13 3/4%, section 13(a).....	\$ 477.61
Net income, section 104(c).....	21,731.50
Tax liability at 50%, section 104(a).....	10,865.75
	<hr/>
Total tax liability.....	\$11,343.36
Tax assessed	None
	<hr/>
Deficiency	\$11,343.36
5% penalty	567.17
	<hr/>
Total deficiency and penalty.....	\$11,910.53

1933

Net loss reported on return.....	\$ 118.75
Add:	
1. Excessive depreciation	13,975.02
2. Reserve for bad debts.....	2,160.80
3. Loss on steamship operation.....	4,412.26
4. Interest	445.18
	<hr/>
Net income adjusted, section 21.....	\$20,874.51
	[19]
Brought forward	\$20,874.51
Add:	
Dividends	17,541.00
	<hr/>
Net income adjusted, section 104(c).....	\$38,415.51

EXPLANATION OF ADJUSTMENTS

1. See #1 under 1932.
2. The reserve for bad debts has been disallowed in accordance with section 23(j) of the Revenue Act of 1932, since your basis as established

is the actual bad debt basis and no permission has been granted by the Commissioner to change to the reserve basis.

3. See #2 under 1932.
4. See #3 under 1932.

COMPUTATION OF TAX

Net income, section 21.....	\$20,874.51
Tax liability at 13¾%, section 13(a).....	\$ 2,870.25
Net income, sections 104(c).....	38,415.51
Tax liability at 50%, section 104(a).....	19,207.76
Total tax liability	\$22,078.01
Tax assessed	None
Deficiency	\$22,078.01
5% penalty	1,103.90
Total deficiency and penalty.....	\$23,181.91
[20]	

The understatement of tax for the years 1932 and 1933 is attributable to negligence as defined in the regulations and under the provisions of section 293(a) of the Revenue Act of 1932 and a penalty of 5% of each deficiency attaches. The 5% penalty is included in the above assessments.

The interest due on the deficiencies in accordance with the provisions of section 292 of the Revenue Act of 1932 will be computed by this office and demanded by the collector of internal revenue at the time you are called upon to pay the tax.

Payment should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

WILSON BROTHERS AND COMPANY

Kind of Property	Date Built	Cost	Interest Owned by Wilsons	Interest	Depreciation Deducted to Dec. 31, 1928	Date Acquired by Taxpayer	Cost	Depreciation Deducted to Dec. 31, 1931	Residual Cost Jan. 1, 1932	Rate From Jan. 1, 1932	Depreciation 1932	Allowable 1933
S. S. Idaho.....	1916	\$200,000.00	75%	\$150,000.00	\$90,000.00	January 2, 1929	\$60,000.00	\$18,750.00	\$41,250.00	6 $\frac{2}{3}$ %	\$2,750.00	\$2,750.00
S. S. Oregon.....	1916	140,386.15	100%	140,386.15	84,231.69	January 2, 1929	56,154.48	25,000.00	31,154.46	6 $\frac{2}{3}$ %	2,076.96	2,076.96
Wooden building.....	1916	7,500.00			4,875.00	January 2, 1929	2,625.00	3,000.00	None		None	None
Furniture and fixtures.....						January 3, 1929	3,480.20	1,500.00	1,980.20	10 %	198.02	198.02
Automobiles.....						1932			8,249.25	5 %	900.00	1,649.85
Total.....											<u>\$5,924.98</u>	<u>\$6,674.83</u>

[Endorsed] : U.S.B.T.A. Lodged July 5, 1939. Filed July 10, 1939.



[Title of Board and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits the allegations of fact contained in paragraph 2 of the amended petition.

3. Admits that the deficiency in tax here in controversy is for taxes for the calendar years 1932 and 1933 as asserted in the deficiency notice, as alleged in paragraph 3 of the amended petition, but denies the remaining allegations contained in said paragraph. [23]

4. (a) to (c), inclusive. Denies the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (c), inclusive, of paragraph 4 of the amended petition.

5. (a) Admits the allegations contained in subparagraph (a) of paragraph 5 of the amended petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the amended petition.

(c) Admits the allegations contained in sub-

paragraph (c) of paragraph 5 of the amended petition.

(d) Admits on or about March 31, 1933, petitioner filed its income tax return for the taxable year 1932 in which it reported no taxable income for said year as alleged in subparagraph (d) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(e) Admits on or about March 15, 1934, petitioner filed its income tax return for the taxable year 1933 in which it reported no taxable income for said year, as alleged in subparagraph (e) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(f) Denies the allegations contained in subparagraph (f) of paragraph 5 of the amended petition.

(g) Denies the allegations contained in subparagraph (g) of paragraph 5 of the amended petition.

(h) Admits respondent added to the amount of income reported by the petitioner for the year 1932 \$5,225.02 and for the year 1933 [24] \$13,975.02 as excessive depreciation, as alleged in subparagraph (h) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(i) Admits the allegations contained in sub-

paragraph (i) of paragraph 5 of the amended petition.

(j) Admits the depreciation allowed by respondent was \$108,750.00 as stipulated, as alleged in subparagraph (j) of Paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(k) Admits, as determined in said deficiency notice said steamship "Idaho" had a useful depreciable life of not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, as alleged in subparagraph (k) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(l) Admits the depreciation allowed by respondent was \$109,231.69 as stipulated, as alleged in subparagraph (l) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(m) Admits, as determined in said deficiency notice said steamship "Oregon" had a useful depreciable life not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, as alleged in subparagraph (m) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph. [25]

(n) Denies the allegations contained in subparagraph (n) of paragraph 5 of the amended petition.

(o) Denies the allegations contained in sub-

paragraph (o) of paragraph 5 of the amended petition.

(p) Denies the allegations contained in subparagraph (p) of paragraph 5 of the amended petition.

(q) Denies the allegations contained in subparagraph (q) of paragraph 5 of the amended petition.

(r) Admits during the years 1932 and 1933 petitioner in its income tax returns reported for said years respectively the amounts of \$12,949.58 and \$9,035.81 as income from interest, as alleged in subparagraph (r) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(s) Denies the allegations contained in subparagraph (s) of paragraph 5 of the amended petition.

(t) Denies the allegations contained in subparagraph (t) of paragraph 5 of the amended petition.

(u) Denies the allegations contained in subparagraph (u) of paragraph 5 of the amended petition.

(v) Denies the allegations contained in subparagraph (v) of paragraph 5 of the amended petition.

(w) Denies the allegations contained in subparagraph (w) of paragraph 5 of the amended petition. [26]

6. Denies generally and specifically each and every allegation in the amended petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that the petitioner's appeal be denied.

[Signed] J. P. WENCHEL

TMM

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

T. M. MATHER

Special Attorneys,

Bureau of Internal Revenue.

TMM:emb 7-22-39

[Endorsed]: U.S.B.T.A. Filed July 31, 1939.

[27]

United States Board of Tax Appeals
Washington

Docket No. 83397.

WILSON BROTHERS & CO.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the Memorandum Opinion of the Board entered May 22, 1940, the respondent herein having on June 20, 1940, filed a recomputation of

the tax, and the petitioner having on July 22, 1940, filed an acquiescence in said recomputation, now, therefore, it is

Ordered and Decided: That there are deficiencies in normal taxes, surtaxes, and penalties as follows:

Year	Normal Tax	Additional Tax under section 104, 1932 Act	Penalty
1932	None	\$ 3,316.84	\$165.84
1933	\$1,499.93	14,224.80	786.24

Enter:

[Seal] (Signed) R. L. DISNEY
Member. [28]

Entered Aug. 6, 1940.

[Title of Board and Cause.]

PETITION FOR REVIEW OF DECISION OF
THE UNITED STATES BOARD OF TAX
APPEALS BY THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

To the Honorable, The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Wilson Brothers and Company (properly entitled Wilson Bros. & Co.), your petitioner, pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code respectfully petitions this Honorable Court to review the decision of the United States Board of Tax Appeals entered on the 6th day of August, 1940, and finding deficiencies in income tax, together with additional

tax under Section 104 of the Revenue Act of 1932 and a negligence penalty under Section 293(a) of said Act in the total of \$3,482.68 for the taxable calendar year 1932 and in the total of \$16,510.97 for the taxable calendar year 1933. [29]

I

Jurisdiction

Your petitioner is a corporation organized under the laws of the State of Nevada, having, during the taxable years involved, its principal office and place of business in the City and County of San Francisco, State of California. Petitioner timely filed its Federal income tax returns in respect to which the aforementioned tax liabilities arose with the Collector of Internal Revenue, 1st District of California, located in the City and County of San Francisco, State of California, which is situated within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

II

Prior Proceedings

The Commissioner of Internal Revenue, by his letter dated December 30, 1935, asserted a deficiency in petitioner's tax liability for the year 1932 in the sum of \$11, 343.36 and a penalty of five per centum in the amount of \$567.17, he also asserted a deficiency in petitioner's tax liability for the year 1933 in the sum of \$22,078.01 and a penalty of five per centum in the amount of \$1,103.90. By his letter of March 8, 1938, the Commissioner asserted a

deficiency in petitioner's tax liability for the year 1934 in the sum of \$13,632.27 and a penalty of five percentum in the amount of \$681.61.

Thereafter, and within the times prescribed by law, the petitioner filed with the United States Board of Tax Appeals its petitions under the afore-said two letters requesting the redetermination of such deficiencies. The proceedings duly came on for hearing on June 6, 1939, at which time the two proceedings were [30] consolidated for hearing. The proceedings were submitted to the Board upon a written stipulation of facts, oral testimony of witnesses and documentary evidence applicable to the two proceedings.

Thereafter, and on May 22, 1940, the United States Board of Tax Appeals made its report and rendered a memorandum opinion, through a single member sitting as Division No. 4 of said Board, approving in part the determinations of the Commissioner.

Thereafter, and on August 6, 1940, decisions were made and entered in each of the two proceedings by the United States Board of Tax Appeals whereby final orders of redetermination of deficiencies for the respective years involved were made and entered as follows:

Year	Normal Tax	Additional Tax Under Section 104, 1932 Act and Section 102		Penalty
		1934 Act		
1932	None	\$	3,316.84	\$165.84
1933	\$1,499.93		14,224.80	786.24
1934	1,912.05		9,740.70	582.63

III

Statement of the Nature of the Controversy

This proceeding is for the years 1932 and 1933, (Docket No. 83,397) and involves income taxes, together with surtax alleged under the provisions of Section 104 of the Revenue Act of 1932 and a five per centum penalty for asserted negligence under Section 293 (a) of said Act, for the taxable calendar years 1932 and 1933.

The controversy between petitioner (appellant before the Court) and the Commissioner of Internal Revenue involves several issues which, for the years involved, will be presented in the order in which they are discussed in the report or memorandum opinion of [31] the Board of Tax Appeals.

1.(Issue IV (a) in the report or memorandum opinion) Whether the basis for depreciation of petitioner's 75% interest in the steamship "Idaho" adjusted to January 1, 1932 is \$52,466.67 as determined in the memorandum opinion, or \$91,466.67. This issue is one of law and arises from the difference between the cost (\$40,000) of said interest to Henry Wilson and its value \$79,000) on February 6, 1917 when he made a gift thereof to his wife, Mary H. Wilson, who in turn made a gift thereof to petitioner on January 2, 1929.

2. (Issue V in the report or memorandum opinion). Whether the petitioner corporation was availed of during the taxable years involved for the purpose of preventing imposition of surtax upon

its two shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

3. (Issue VI in the report or memorandum opinion) Whether the petitioner was subject to the five per centum negligence penalty under Section 293(a) of the Revenue Act of 1932.

Due in part to the fact that the report or memorandum opinion of the Board subdivides its findings as it subdivides its opinion on the several issues, thereby disregarding findings of fact made on some issues material to other issues, a consideration of the evidence as well as a consideration of all of the facts found is necessarily involved in the review of the Board's decision.

IV

ASSIGNMENTS OF ERROR

In assigning the errors which petitioner believes to have been committed by the United States Board of Tax Appeals, [32] assignment is made in the order in which the issues were decided and numbered in the report or memorandum opinion of the Board entered May 22, 1940, for the two proceedings docketed and numbered 83,397 and 93,668. For convenience of reference, the issues as considered in the report or memorandum opinion are designated by the Roman numerals, employed in subdividing said report or memorandum opinion into separate parts. No assignments of error are made to issues I and II considered in said report or memorandum opinion.

Petitioner assigns as error the following acts and omissions of said United States Board of Tax Appeals:—

III.

(1) The failure to find and determine that the \$43,276.06 account receivable due from the Woodhead Lumber Co. of California was impaired during the year 1934 in at least the amount (\$5,000.00) charged off by petitioner in said year against said account as a partial bad debt.

(2) The failure to find and determine that petitioner had fully met its burden of proving error on the part of the respondent in disallowing the claimed deduction of such partial bad debt, such disallowance being predicated entirely on the false assumption that no direct write-off had been made of said \$5,000.

(3) The making of a purported finding of fact contrary to the evidence, record and issue involved is as follows:

“Upon consideration of the entire record we find and determine that the alleged worthless character of the debt from the Woodhead Lumber Co. of California has not been shown. We therefore find and hold that the Commissioner did not err in disallowing the \$5,000 deduction claimed.” [33]

(4) The failure to find that the cost to petitioner of its bonds of the Kentucky Fuel Gas Corporation were impaired during the year 1934 in at least the amount (\$5,500.00) charged off by peti-

tioner in said year against the cost of said bonds as a partial bad debt.

(5) The failure to find and determine that petitioner had fully met its burden of proving error on the part of respondent in disallowing the claimed deduction of such partial bad debt, such disallowance being entirely predicated entirely on the false assumption that no direct write-off had been made of said \$5,000.

(6) The making of a purported finding with respect to the deduction of said \$5,500 contrary to the evidence, record and issue involved as follows:

“Obviously such a record does not show error on the part of the Commissioner in denying the deduction.”

IV

(7) The failure to allow as a basis for depreciation on the Steamship “Idaho” from January 1, 1932, the amount of \$91,377.78 and to determine that petitioner was entitled to deduct depreciation on said steamship for each of the taxable years 1932, 1933 and 1934 in the amount of \$6,100.77 per annum.

(8) The failure to allow as a part of the basis of depreciation of the Steamship “Idaho” from January 1, 1932, the amount of \$79,000. as the fair market value of a twenty per cent interest therein given to Mary H. Wilson on February 6, 1917, by her husband, at which time said steamship had a fair market value of \$395,000., which said twenty

per cent interest was donated to petitioner by said Mary H. Wilson on January 2, 1929. [34]

(9) The determination that the basis (unadjusted) of property acquired by gift prior to December 31, 1920 is changed from the value at the time of said gift to cost to the donor of said gift when said property is made the subject matter of a gift by said donee after December 31, 1920.

V

(10) The making of a purported finding with respect to all of the taxable years involved and without discrimination between the circumstances and facts relating to each of the years 1932, 1933, and 1934, to the effect:

“We hold that the petitioner was availed of in the taxable years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.”

when in fact the record and that part of the record considered in the report or memorandum opinion with respect to such finding is contrary to such finding and said finding is inconsistent with other findings upon which it is purportedly based.

(11) The determination that for the taxable year 1932 petitioner is liable under the alleged authority of Section 104 (a) of the Revenue Act of 1932 in the amount of \$3,316.84 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(12) The determination that for the taxable year 1933 petitioner is liable under the alleged authority of Section 104(a) of the Revenue Act of 1932 in the amount of \$14,224.80 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section. [35]

(13) The determination that for the taxable year 1934 petitioner is liable under the alleged authority of Section 102(a) of the Revenue Act of 1934 in the amount of \$9,740.70 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(14) In making the determinations complained of in assignments 10 to 13 hereof, inclusive, the failure to consider the true earned surplus of petitioner as distinguished from its taxable earnings and profits as determined in the report or memorandum opinion.

(15) In making the determinations complained of in assignments 10 to 13 hereof, inclusive, the failure to make any finding as to what surplus, if any, petitioner had accumulated in each of the taxable years involved.

VI

(16) The determination that for the taxable year 1932 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1932 in the amount of \$165.84, when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

(17) The determination that for the taxable year 1933 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1932 in the amount of \$785.24, when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

(18) The determination that for the taxable year 1934 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1934 in the amount of \$582.63, [36] when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

General

(19) The failure to make comprehensive and generally applicable findings of facts which would apply equally to all issues involved in the proceedings and be adequate for proper determination of all the issues involved.

(20) The setting forth separately in the report or memorandum opinion in connection with the discussion and determination of each of the issues involved therein of inadequate facts to support the conclusions reached in such opinion on the majority of said issues.

(21) The severance of facts in the relation to each of the issues discussed and determined in the report or memorandum opinion so that purported

findings with regard to one issue do not have application to the other issues involved.

(22) The determination of separate issues without regard to facts found to be true with respect to other issues involved in the proceedings.

(N. B. The errors numbered 19, 20, 21, and 22 are manifest from a reading of the report or memorandum opinion on the various numbered issues and from the following express language of the opinion:

“Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be considered in the order above set forth, the facts, except the general facts as to incorporation stated above, being set forth separately in connection with the discussion of each issue.” (Italics supplied.) [37]

(23) The intermingling of findings of fact, conclusions as to facts and conclusions of law in such manner as to render the decision of the Board in its report or memorandum opinion arbitrary and theoretical.

(24) In making its findings of fact and conclusions of law therefrom the Board failed to make findings of fact in conformance with the evidence.

Wherefore, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of

the record be prepared in accordance with law and the rules of said Court for filing, and that appropriate action be taken to the end that the errors complained of herein be reviewed and corrected by said Court.

WILSON BROS. & CO.,
By FRANCIS A. WILSON
President.

ADOLPHUS E. GRAUPNER,
LOUIS JANIN

Counsel for Petitioner
1110 Balfour Building,
San Francisco, California. [38]

State of California,
City and County of San Francisco.—ss.

Francis A. Wilson being first and duly sworn says, I am president of Wilson Bros. & Co., the petitioner and appellant above-named; that I have read the foregoing petition for review and know the contents thereof and the facts set forth therein are true as I verily believe; that said petition is filed in good faith and not for purposes of delay.

FRANCIS A. WILSON

Subscribed and sworn to before me this 24th day of October, 1940.

[Seal] ELEANOR J. SMITH
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Dec. 31, 1943.

[Endorsed]: U.S.B.T.A. Filed Oct. 31, 1940. [39]

[Title of Board and Cause.]

Docket No. 83,397

AFFIDAVIT OF SERVICE BY MAIL

Louis Janin, being first duly sworn, deposes and says:

That he is a citizen of the United States, and over the age of 21 years, and not a party to the above-entitled proceedings. That on this 30th day of October, 1940, he deposited in the United States Post Office in San Francisco, California, addressed to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., a copy of petition for review in the above-entitled proceedings, together with a notice of mailing petition for review, addressed to said Commissioner of Internal Revenue, and to John P. Wenchel, Chief Counsel, Attorney for Commissioner. That said copy of petition and notice of filing petition were enclosed in an envelope addressed to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., with air mail postage prepaid thereon for immediate and prompt delivery.

LOUIS JANIN

Subscribed and sworn to before me this 30th day of October, 1940.

[Notarial Seal] EDITH VIA

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: U.S.B.T.A. Filed Oct. 31, 1940. [40]

[Title of Board and Cause.]

To Commissioner of Internal Revenue, and to John P. Wenchel, Chief Counsel, Attorney for Respondent, Bureau of Internal Revenue Building, Washington, D. C.:

You are hereby notified that on this 31st day of October 1940, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the United States Board of Tax Appeals, heretofore rendered in the above-entitled cause, was mailed by air mail to the Clerk of said Board. A copy of the petition as filed is attached hereto, and served upon you.

Dated: This 30th day of October, 1940.

(s) ADOLPHUS E. GRAUPNER

(s) LOUIS JANIN

Attorneys for Petitioner.

Service of the foregoing notice of filing and of a copy of the petition for review is hereby acknowledged this 31st day of October, 1940.

(s) J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue

Attorney for Respondent.

[Endorsed]: U.S.B.T.A. Filed Nov. 1, 1940. [41]

[Title of Board and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

In compliance with paragraph (d) of Rule 75 of the Rules of Civil Procedure for the District Court of the United States Board of Tax Appeals by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit the above-named petitioner herewith states the points on which it intends to rely on the pending petition for review of the decision of said Board in the above-entitled proceeding.

Petitioner will rely upon all of the assignments of error set forth in the petition for review of decision in the above-entitled proceedings by the United States Circuit Court of Appeals for the Ninth Circuit filed with the United States Board of Tax Appeals on October 31, 1940.

With respect to the above-entitled proceeding involving the taxable calendar years 1932 and 1933 a concise statement of the points involved in the appeal is as follows: [42]

1. The Board of Tax Appeals erred in failing to allow petitioner a valuation, as a basis for depreciation on the Steamship "Idaho" from January 1, 1932 of the amount of \$91,377.78 and to determine that petitioner was entitled to deduct depreciation on said steamship for each of the taxable years 1932, 1933 and 1934 in the amount of \$6,100.78 per annum. Such error resulted from failure to determine as a part of the basis of depreciation,

the amount of \$79,000 as the fair market value of a twenty per cent interest in said steamship given to Mary H. Wilson on February 6, 1917, and by her donated to petitioner on January 2, 1929.

2. The Board of Tax Appeals erred in finding with respect to all the taxable years involved, viz: 1932, 1933 and 1934, as follows:

“We hold that the petitioner was availed of in the taxable years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.”

and further erred in determining that for the year 1932 petitioner is liable under Section 104(a) of the Revenue Act of 1932 for \$3,316.84 as a surtax for alleged accumulation of surplus; also, it further erred in determining that for the year 1933 petitioner is liable under the aforesaid section for \$14,224.80 as a surtax for alleged accumulation of surplus.

In making such determinations the Board failed to consider petitioner's true earned surplus as distinguished from its taxable earnings and profits as determined in the report or memorandum opinion and, also, failed to make any findings as to what surplus, if any, petitioner had accumulated in each of the taxable years involved. [43]

3. The Board erred in determining that for each of the taxable years 1932 and 1933 petitioner is liable for a negligence penalty under Section 293(a)

of the Revenue Act of 1932 when the record does not disclose that any part of the deficiency determined in each of said years was "due to negligence or intentional disregard of rules and regulations."

4. The Board erred in failing to make comprehensive or general finding of facts applicable to all issues involved and further erred in segregating and separating the findings made so that findings made on one issue, although properly material and applicable to other issues, are made inapplicable to other issues to which they are material and controlling as is evidenced by the following preliminary statement in the report or memorandum opinion:

"Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be considered in the order above set forth, *the facts*, except the general facts as to incorporation stated above, *being set forth separately in connection with the discussion of each issue.*" (Italics supplied.)

The Board further erred in failing to make findings of fact in conformance with the evidence, and in intermingling, as findings of fact, facts, conclusions as to facts, and conclusions of law in such manner as to conflict with the record and the law.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Attorneys for Petitioner.

Admission of service of the foregoing statement of points on which petitioner intends to rely is hereby admitted this 11th day of March, 1941.

J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent on Review.

[Endorsed]: U.S.B.T.A. Filed Mar. 11, 1941. [44]

U. S. Board of Tax Appeals Filed March 14, 1941
In The United States Circuit Court of Appeals
For the Ninth Circuit
B. T. A.

Docket No. 83397

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.,) a corporation,
Petitioner on Review,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

B. T. A.

Docket No. 93668

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.,) a corporation,
Petitioner on Review,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

ORDER FOR CONSOLIDATION OF
THE RECORD

Upon consideration of the motion filed herein by counsel for the petitioner on review in the above-entitled proceedings, moving the Court to consolidate said proceedings for purposes of record, briefing, hearing and decision, and for other purposes, it is this 10th day of March, 1941

Ordered that the said motion be and it is hereby granted.

And it is further ordered that a certified copy of [45] the motion and this order be transmitted by the Clerk of this Court to the Clerk of the United States Board of Tax Appeals.

(s) CURTIS D. WILBUR

U. S. Circuit Judge.

[Endorsed]: Filed March 10, 1941. Paul P. O'Brien, Clerk.

A true copy

Attest: March 10, 1941

[Seal] PAUL P. O'BRIEN

Clerk.

By FRANK A. SCHMID,

Deputy Clerk

[Endorsed]: U.S.B.T.A. Filed March 14, 1941.

[46]

[Title of Board and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

In compliance with the provisions of paragraph (a) of Rule 75 of the Rules of Civil Procedure for the District Courts of the United States as made applicable to review of a decision of the United States Board of Tax Appeals by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the above-named petitioner hereby designates the portions of the record,

proceedings, and evidence to be contained in the record on review of the above-entitled proceedings, as follows:

1. Docket entries of the proceedings before the Board of Tax Appeals.

2. Motion for order and order granting leave to file amended petition.

3. Amended petition filed July 10, 1939.

4. Answer to amended petition filed July 31, 1939. [47]

5. Stipulation of facts filed in the proceeding, excepting therefrom copies of bills of sale of enrolled vessels attached thereto and referred to as Exhibits A and B to said stipulation.

6. Findings of fact and memorandum opinion of the Board promulgated May 22, 1940.

7. Decision of the Board of Tax Appeals entered August 6, 1940.

8. Petition for Review of Decision of the Board by the United States Circuit Court of Appeals for the Ninth Circuit, filed October 31, 1940.

9. Notice of filing of petition for review and admission of service thereof.

10. Orders enlarging time for preparation, transmission and delivery of the record.

11. Revised Statement of the Evidence.

12. Designation of contents of record on appeal.

13. Statement of Points on which petitioner intends to rely.

14. Petitioner's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19, 20, 21, 22 and 23 and Respondent's Exhibits A, B and C.

15. Order of the United States Circuit Court of Appeals, Ninth Circuit, for consolidation of the record.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Counsel for Petitioner,
1110 Balfour Building,
San Francisco, California.

Service of the foregoing designation of the contents of record on appeal is hereby admitted and agreed to this day of March, 1941.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent on Review.

[Endorsed]: U. S. B. T. A. Filed March 11, 1941.
[48]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 48, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of

Tax Appeals, at Washington, in the District of Columbia, this 20th day of March, 1941.

[Seal] B. D. GAMBLE

Clerk,

United States Board of Tax Appeals.

[49]

[Endorsed]: No. 9782. United States Circuit Court of Appeals for the Ninth Circuit. Wilson Brothers and Company (Wilson Bros. & Co.,) a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed March 31, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In The United States Circuit Court of Appeals
For the Ninth Circuit

No. 9782

B. T. A.

Docket No. 93668

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.,) a corporation,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

NOTICE OF ADOPTION OF DESIGNATION
OF CONTENTS OF RECORD AND STATE-
MENT OF POINTS FILED WITH THE
BOARD OF TAX APPEALS.

To the Honorable Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:

Notice is hereby given that the Petitioner on
Review in the above entitled proceedings hereby
adopts for the purposes of petition on review to the
above entitled court, the Designation of contents
of Record and Statement of Points filed with the
Clerk of the United States Board of Tax Appeals
in the above numbered proceedings on March 11,
1941.

Dated this 16th day of April, 1941.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Attorneys for the Above Named
Petitioner.

[Endorsed]: Filed April 17, 1941. Paul P.
O'Brien, Clerk.

